

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. NO.5450 OF 2003.

Smt.Zubedabegum wd/o Abdul Hai & Ors..... ... Petitioners.

V/s

The Union of India & Others Respondents.

Shri [A.N.Maniyar](#), Adv. for the petitioners.

Shri [M.S.Karnik](#), Adv. for the Respondent Nos.1 to 3.

CORAM: V.G. PALSHIKAR,
AND
SMT.RANJANA DESAI, JJ.

18th August, 2004.

ORAL JUDGMENT:(Per Palshikar, J.)

By this petition the petitioner who is widow of a Government Servant seeks mandamus directing the Respondent-Government to pay pension to her children as per the Pension Scheme of 1995. Husband of the petitioner died in 1989 and since then the petitioner is getting family pension for her.

2. Earlier Family Pension Scheme of 1971 was operative when the petitioner's husband died and family pension was paid to the petitioner under that Scheme of 1971. On 16.11.1995 the Government framed the Employees' Pension Scheme, of 1995 and it

became operative from that day and it was applicable to factory workers and other establishments with effect from 1.4.1993.

4. The claim of the petitioner is that by reason of para 6 of 1995 Scheme the petitioner is a member of the Scheme being member of 1971 scheme and by reason of savings mentioned in para 44 she becomes member of the new Scheme of 1995 and consequently is entitled to payment for her children as envisaged by 1995 order. This claim of the petitioner is opposed by respondents stating that she is not and cannot be a member of 1995 Scheme as both 1971 and 1995 schemes obsolete membership only to the workmen or employees of the Government and not a beneficiary of that employee.

5. We will consider in brief the contentions raised above in the light of Scheme of 1995 itself. The Employees' Pension Scheme of 1995 came into force on 16.11.1995 and was effective from 1.4.1993. In para 1(3) it is clearly stated that the Scheme shall apply to the employees of factories and other establishments etc. Para 2 defines terms used in the Scheme. Item (v) defines who "eligible member" is. It reads as under:

“(v) “Eligible Members” means an employee who is eligible to join the Employees' Pension Scheme;”

Eligible member means an employee who is eligible to join the Employees' Pension Scheme. Item (vi) defines of “Existing Member” means “Existing Employee” who is member of the Employees' Pension Scheme, 1971. Item (vii) defines what “family” is. According to it “family” means wife of male member and sons and daughters of member

of the Employees' Pension Fund. It em (ix) defines what the member is. It reads :

“(ix) “Member” means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of this Scheme.”

It will thus be seen that the entire scheme is intended for the benefit of employees of the Government. The family of the employee is the beneficiary under the Scheme i.e. Member of the Scheme. The contention of the learned counsel appearing on behalf of the petitioner is that she is a member of that Scheme as per para 6. Para 6 reads as under:

“6. **Membership of the Employees' Pension Scheme.-** Subject to sub-paragraph (3) of paragraph 1, the Scheme shall apply to every employee:-

(a)who on or after the 16th November, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952 or of

the Provident Funds of the Factories and other establishments exempted by the appropriate Government under section 17 of the

Act, or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952, from the date of such membership;

(b) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995;

(c) who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under paragraph 7;

(d) Who has been a member of the Employees' Provident Fund or of Provident Funds of Factories and other establishments exempted by the appropriate Government under section 17 of the Act or in whose case exemption has been granted under Paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952, on 15th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7.”

It will be seen that the emphasis in this paragraph also is of an “employee”. It speaks of every employee who has fulfilled (a), (b), (c) or (d). Each of these sub-clauses refer only to every employee mentioned in para 6. Therefore a plain reading of para 6 would mean

that every employee who has been a member or ceased Employees' Family Pension Scheme before the commencement of this Act from 16.1.1995 shall be a member of the new Scheme. It does not anywhere make any reference to a beneficiary of 1971 Scheme. Her husband was the member and on his death she became beneficiary under that Scheme as a family member of the employee. This being the correct position the claim of the petitioner that the Scheme of 1995 is applicable to her and therefore she is entitled to a direction for payment of children's pension to her children is unsustainable. In the result therefore the petition fails and is dismissed.